

EXHIBIT D

Subject: Re: Concord v. Anthropic - Proposed stipulated preliminary injunction
Date: Wednesday, February 14, 2024 at 1:55:50 PM Eastern Standard Time
From: Nick Hailey
To: Joe.Wetzel@lw.com, Andrew.Gass@lw.com, Franco.Benyamin@lw.com
CC: Matt Oppenheim, Jennifer Pariser
Attachments: image003.png, image002.png, image001.png

Joe,

We continue to believe that this discussion should take place in the context of our pending preliminary injunction motion in this Court, not in a vacuum. As we've communicated, we would not object if Anthropic included in the stipulated preliminary injunction a reservation of rights regarding jurisdiction (as you've done in other filings in this case). We have also invited you to propose any other language you believe should be included in the stipulated PI. You haven't responded to us on those points.

As to your question on "opting out," we are simply asking that you abide by the copyright law by excluding Publishers' works from future training.

Thank you,

Nick

Nick Hailey
Oppenheim + Zebrak, LLP
4530 Wisconsin Avenue NW, 5th Floor
Washington, D.C. 20016
Nick@oandzlaw.com | www.oandzlaw.com
 [Connect with us on LinkedIn](#)

From: Joe.Wetzel@lw.com <Joe.Wetzel@lw.com>
Date: Monday, February 12, 2024 at 8:01 PM
To: Nick Hailey <Nick@oandzlaw.com>, Andrew.Gass@lw.com <Andrew.Gass@lw.com>, Franco.Benyamin@lw.com <Franco.Benyamin@lw.com>
Cc: Matt Oppenheim <Matt@oandzlaw.com>, Jennifer Pariser <JPariser@oandzlaw.com>
Subject: RE: Concord v. Anthropic - Proposed stipulated preliminary injunction

Nick,

Anthropic has always been willing to discuss these matters with Plaintiffs and has made that clear since October. No, Anthropic will not voluntarily subject itself to the power of contempt in M.D. Tenn., which otherwise lacks personal jurisdiction over Anthropic. But we think there are ways to work

around that issue if the parties can reach agreement on the substance.

On that note, we do not understand your statements about changing this to an “opt out” approach. Plaintiffs are proposing to have their works excluded from future training—i.e., they want Anthropic to agree to an injunction opting those works out of future training sets. Again, this is a technical matter that requires further discussion in order for Anthropic to consider such a compromise, which to be clear is inconsistent with Anthropic’s view that it is fair use to make intermediate copies of works for purposes of training large language models.

Best,

Joe

Joe Wetzel

Pronouns: he/him/his

LATHAM & WATKINS LLP

505 Montgomery Street | Suite 2000 | San Francisco, CA 94111-6538

D: +1.415.395.8007 | M: +1.917.509.4796

From: Nick Hailey <Nick@oandzlaw.com>

Sent: Sunday, February 11, 2024 9:04 AM

To: Wetzel, Joe (Bay Area) <Joe.Wetzel@lw.com>; Gass, Andrew (Bay Area) <Andrew.Gass@lw.com>; Benyamin, Franco (NY) <Franco.Benyamin@lw.com>

Cc: Matt Oppenheim <Matt@oandzlaw.com>; Jennifer Pariser <JPariser@oandzlaw.com>

Subject: Re: Concord v. Anthropic - Proposed stipulated preliminary injunction

Joe,

You say that you’re willing to discuss stipulating to the preliminary injunctive relief we seek, but you refuse to do so in this Court, where the case is proceeding and where our preliminary injunction motion is pending.

If Anthropic is amenable to a stipulated PI, then it should agree to the entry of that PI in this Court, while reserving its rights to contest jurisdiction. If you wish to add such a reservation of rights by Anthropic to the text of the stipulated PI that we proposed, we would not object to such language. Please confirm by the end of the day Monday 2/12 whether Anthropic will agree to the stipulated PI with that update, and if so, please provide the specific language you propose including. To the extent that you believe there are other changes that should be made to the language of the stipulated PI, feel free to provide those proposed edits by Monday as well. But, to be clear, changing this to an “opt out” approach would be inconsistent with copyright law and unacceptable.

If you’d like to have further discussion, we are open to a dialogue and available. We of course reserve all rights.

Thanks,

Nick

Nick Hailey
Oppenheim + Zebrak, LLP
4530 Wisconsin Avenue NW, 5th Floor
Washington, D.C. 20016
Nick@oandzlaw.com | www.oandzlaw.com
 [Connect with us on LinkedIn](#)

From: Joe.Wetzel@lw.com <Joe.Wetzel@lw.com>
Date: Friday, February 9, 2024 at 6:47 PM
To: Nick Hailey <Nick@oandzlaw.com>, Andrew.Gass@lw.com <Andrew.Gass@lw.com>, Franco.Benyamin@lw.com <Franco.Benyamin@lw.com>
Cc: Matt Oppenheim <Matt@oandzlaw.com>, Jennifer Pariser <JPariser@oandzlaw.com>
Subject: RE: Concord v. Anthropic - Proposed stipulated preliminary injunction

Nick,

Thank you for your email. Anthropic remains willing to discuss with plaintiffs an agreement regarding guardrails against outputs of plaintiffs' full catalogs of song lyrics, e.g., to account for updates to those catalogs. It is also willing to discuss potential mechanisms for opting plaintiffs' lyrics out of the training process for future training (as opposed to for already-trained, but unreleased models) until there is a determination by the courts on whether such use is a fair use. However, these technical matters warrant some discussion between the parties, and Anthropic will not stipulate to a preliminary injunction in a court that lacks jurisdiction to hear plaintiffs' claims.

Please let us know if plaintiffs would like to discuss further. Anthropic's willingness to consider these measures, particularly on the training front, are solely for purposes of resolving plaintiffs' pending preliminary injunction motion and allowing this case to proceed on the merits. Anthropic otherwise reserves all rights and positions.

Best,

Joe Wetzel
Pronouns: he/him/his

LATHAM & WATKINS LLP
505 Montgomery Street | Suite 2000 | San Francisco, CA 94111-6538
D: +1.415.395.8007 | M: +1.917.509.4796

From: Nick Hailey <Nick@oandzlaw.com>
Sent: Tuesday, February 6, 2024 1:48 PM
To: Wetzel, Joe (Bay Area) <Joe.Wetzel@lw.com>; Gass, Andrew (Bay Area) <Andrew.Gass@lw.com>; Benyamin, Franco (NY) <Franco.Benyamin@lw.com>
Cc: Matt Oppenheim <Matt@oandzlaw.com>; Jennifer Pariser <JPariser@oandzlaw.com>
Subject: Concord v. Anthropic - Proposed stipulated preliminary injunction

Counsel,

In connection with Plaintiffs' pending motion for preliminary injunction in the Concord v. Anthropic

case, Plaintiffs propose the attached stipulated preliminary injunction. Please confirm by Friday Feb. 9 whether Anthropic will agree to the stipulated preliminary injunction. Let us know if you have any questions.

Best,

Nick

Nick Hailey

Oppenheim + Zebrak, LLP

4530 Wisconsin Avenue NW, 5th Floor

Washington, D.C. 20016

Nick@oandzlaw.com | www.oandzlaw.com

 [Connect with us on LinkedIn](#)



This e-mail and any attachments may contain information that is private, confidential, or protected by attorney-client or other privilege. If you are not the intended recipient, please delete it from your system without copying, reviewing or distributing any portion and notify sender by reply e-mail.

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements. Any personal information contained or referred to within this electronic communication will be processed in accordance with the firm's privacy notices and Global Privacy Standards available at www.lw.com.